

AO 106 (Rev. 04/010) Application for Search Warrant

AUTHORIZED AND APPROVED/DATE: D.H. Dilbeck: 9/15/2022

UNITED STATES DISTRICT COURT

WESTERN

for the
DISTRICT OF

OKLAHOMA

In the Matter of the Search of
Black 2018 GMC Pickup
VIN: 3GTU2NEC8JG398051

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Case No: M-22-684-AMG

APPLICATION FOR SEARCH WARRANT

I, a federal law enforcement officer or attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following property:

See Attachment A

Located in the Western District of Oklahoma, there is now concealed:

See Attachment B

The basis for the search under Fed. R. Crim.P.41(c) is (check one or more):

- ☒ evidence of the crime;
☐ contraband, fruits of crime, or other items illegally possessed;
☒ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section

18 U.S.C. § § 1153 and 1112

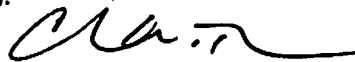
Offense Description

Manslaughter within Indian Country

The application is based on these facts:

See attached Affidavit of Special Agent Charles W. Thumann, Federal Bureau of Investigation, which is incorporated by reference herein.

- ☒ Continued on the attached sheet(s).
☐ Delayed notice of [No. of Days] days (give exact ending date if more than 30 days) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet(s).



Applicant's signature

Charles W. Thumann
Special Agent
FBI

Sworn to before me and signed in my presence.

Date:

9/15/2022



Judge's signature

City and State: Oklahoma City, Oklahoma

AMANDA MAXFIELD GREEN, U.S. Magistrate Judge
Printed name and title

**WESTERN DISTRICT OF OKLAHOMA
OKLAHOMA CITY, OKLAHOMA**

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA)

AFFIDAVIT

1. I, Charles W. Thumann, a Special Agent of the Federal Bureau of Investigation (FBI), Oklahoma City Division, being duly sworn, state:

AFFIANT'S EXPERIENCE

2. I have been employed as a Special Agent (SA) with the FBI since July 2004 and have been assigned to the Oklahoma City Division of the FBI for approximately 13 years. During the past 18 years, I have conducted a wide variety of investigations, including cases involving violent crimes in Indian country.

3. I am aware of the information set forth below through conversations with other law enforcement officers, review of reports and affidavits prepared by other law enforcement officers, and review of documents, surveillance video, and photographs from related state court proceedings. This case was originally investigated by the Oklahoma Highway Patrol.

PURPOSE OF AFFIDAVIT

4. The information contained in this Affidavit is submitted for the limited purpose of establishing probable cause to secure a search warrant for a black 2018 GMC

pickup, vehicle identification number (VIN): 3GTU2NEC8JG398051 ("the **SUBJECT VEHICLE**"), as described further in Attachment A (physical description), for evidence of violations of Title 18 United States Code §§ 1153 and 1112, manslaughter within Indian Country, described further in Attachment B (description of items to be seized).

5. Since this Affidavit is being submitted for the limited purpose of securing a search warrant, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause for the requested warrant.

BACKGROUND OF INVESTIGATION

6. On September 14, 2022, at approximately 12:10 a.m., the Oklahoma Highway Patrol (OHP) Regional Dispatch Center received multiple calls of a wrong way driver near Purcell, Oklahoma. The callers advised the vehicle was driving northbound in the southbound lane of Interstate 35 near Mile Marker 95. OHP Trooper A.M. was contacted and began traveling to the last known location. Shortly after being notified and requested to respond to the area of the wrong way driver, Trp. A.M. was notified that the vehicle driving the wrong way had caused a collision which resulted in a death.

7. Trp. A.M. arrived at the collision scene on Interstate 35 southbound at Mile Marker 98. Trp. A.M. learned the **SUBJECT VEHICLE**, driven by Kevin B. McGuire, was traveling in the wrong direction and struck a red Ford pickup, driven by the victim,

T.P., which caused the death of T.P. The location of the traffic collision which resulted in a death, near Mile Marker 98 on Interstate 35, occurred within the exterior boundaries of the Chickasaw Nation Reservation, which qualifies as Indian Country under Title 18 United States Code § 1151.

8. During the initial collision investigation, Trp. A.M. spoke with McGuire who stated he had traveled from Edmond, Oklahoma to Ardmore, Oklahoma. McGuire stated he was unaware he was traveling on the wrong side of the Interstate. While speaking with McGuire, Trp. A.M. detected an odor of alcohol coming from McGuire. Trp. A.M. asked McGuire if he had been drinking. McGuire confirmed he had consumed alcohol prior to the collision.

9. Trp. A.M. contacted Trp. M.C. with OHP Traffic Homicide Unit to request assistance at the scene. Trp. M.C. arrived on scene to document the collision scene. This included taking ground photographs and marked items of evidence with white paint. Trp. M.C. requested Trp. A.M. perform the Standardized Field Sobriety Test on McGuire. McGuire agreed to take the test which was performed at the collision scene. Due to the totality of the circumstances and McGuire's poor performance on the test, McGuire was placed under arrest. McGuire provided his consent to Trp. A.M. to take the state of Oklahoma's blood test. Trp. A.M. transported McGuire to the Purcell Emergency Room in Purcell, Oklahoma, where the blood draw was conducted. Following the blood draw and a

medical release from the Purcell ER, McGuire was transported to the Grady County Jail in Chickasha, Oklahoma.

10. I received Tribal Citizenship Verification for McGuire, which confirmed that he possessed Indian blood and is an enrolled tribal member of the Citizen Potawatomi Nation of Oklahoma, a federally-recognized tribe. Consequently, he is an American Indian within the meaning of federal law.

11. On September 14, 2022, following the arrest of McGuire, the **SUBJECT VEHICLE** was secured by OHP and transported to Quality Towing Service in Norman, Oklahoma. The **SUBJECT VEHICLE** has been maintained and securely stored inside the facility of Quality Towing Service located at 4204 Classen Circle, Norman, Oklahoma.

12. A search of the **SUBJECT VEHICLE** may contain the following:
- a. Event data recorders capable of storing data related to a traffic crash.
 - b. Inspection of the on/off position of the instruments on the interior of the vehicle, inspection of any lamps or bulbs contained on the interior or exterior of the vehicle that may show indications of their use during the collision know as cold/hot shock. Inspection of the seat belt harnesses, connectors and webbing to show the use or lack thereof, inspection of the tires and wheels to determine the types of tires/wheels, air pressure to ensure authenticity of information recovered from event data recorders and weighing of the vehicle to determine the total weight by gross, axle, and tire points, inspection of the braking system of the vehicle and removing any item listed for further inspection by experts in said field.
 - c. Papers and receipts showing recent repairs of the vehicle and receipts showing recent locations of the occupants and locations of those purchases, which could lead to the identification of witnesses regarding

seating positions and pre-trip events. Papers and receipts showing dominion and control of the vehicle.

13. From my personal knowledge, and from knowledge I have derived from the training and experience of the Oklahoma Highway Patrol, I know that motor vehicles contain event data recorders capable of recording crash data. Data recorders that may be mounted on the engine in certain motor vehicles are called Engine Control Modules (ECM). Event data recorders mounted inside the vehicle are called Airbag Control Modules (ACM). Title 49 C.F.R. 563 requires these recorders to be mounted on the interior of the vehicle to collect certain collision data, including but not limited to: vehicle speed, status of brake lights, percent of throttle along with a variety of other data.

14. OHP employs troopers trained with the capability of imaging the data inside these modules. Furthermore, OHP has troopers who are trained to interpret the data once imaged and apply it to a situational complete crash reconstruction.

15. OHP may utilize equipment to communicate with the modules without removing the modules from the vehicle. However, certain collisions destroy the vehicle where the modules must be physically removed to extract the data. This method is known as Direct to Module (DTM).

CONCLUSION

16. Based on the foregoing, I respectfully submit that there is probable cause to believe that evidence relating to manslaughter in Indian Country in violation of Title 18

United States Code §§ 1153 and 1112 are located in the **SUBJECT VEHICLE**. I therefore respectfully request That this Court issue a search warrant for the **SUBJECT VEHICLE**, described in Attachment A, authorizing the seizure of the items described in Attachment B.

FURTHER, YOUR AFFIANT SAYETH NOT.



CHARLES W. THUMANN
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Sworn to and subscribed before me this 15th day of September, 2022.



AMANDA MAXFIELD GREEN
U.S. MAGISTRATE JUDGE

ATTACHMENT A

DESCRIPTION OF SUBJECT VEHICLE

Black 2018 GMC pickup bearing Citizen Potawatomi Nation of Oklahoma license plate 1Q140 and Vehicle Identification Number (VIN) 3GTU2NEC8JG398051.

ATTACHMENT B

ITEMS TO BE SEIZED

The items to be seized are evidence, contraband, fruits, or instrumentalities of violations of manslaughter in violation of Title 18 United States Code, Sections 1153 and 1112, namely:

1. Any and all event data recorders capable of storing data related to a traffic crash.
2. Any and all Engine Control Modules, Airbag Control Modules, and any other modules within the vehicle which collects vehicle data.
3. Papers and receipts showing recent repairs of the vehicle and receipts showing recent locations of the occupants and locations of those purchases, which could lead to the identification of witnesses regarding seating positions and pre-trip events. Papers and receipts showing dominion and control of the vehicle.
4. Any items which may have contained alcohol, including but not limited to, cups, bottles, cans, or containers.